

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 760 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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TEHMINABEN T DIVECHA

Versus

STATE OF GUJARAT  
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Appearance:

MR JITENDRA M PATEL for Petitioner  
Mr. I.M.Pandya AGP for Respondent No. 1  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Patel is appearing for the petitioner and learned AGP Mr. Pandya is appearing for the respondent authorities. This petition was admitted on 16.4.1991 by issuing rule thereon and the status quo

as on that day was ordered to be maintained till the final disposal of this petition. In this petition, the petitioner is challenging the order passed by the Gujarat Revenue Tribunal dated 20.9.1988 in Revision application No. 35 of 1987.

The facts leading to the filing of this petition, in short, are that the said revision application was filed by the petitioner under Section 38 of the Gujarat Agricultural Lands Ceiling Act against the order dated 8th June, 1987 passed by the Deputy Collector in Ceiling Appeal No. 29 of 1984 by which the said appeal was dismissed and the order passed by the Mamlatdar and ALT was confirmed.

Learned advocate Mr. Patel has submitted that the tribunal has committed gross error in relying upon the order passed by the revenue tribunal dated 25.8.1982 in revision application no. 123 of 1981 because this revision application was not filed by the petitioner but it was filed by some other person namely Jivabhai and Ukabhai wherein the present petitioner was respondent no.3.

On the other hand, learned AGP Mr. Pandya has submitted that the order passed by the tribunal in revision application no. 123 of 1981 dated 25.8.1982 is relating to the land in question and the tribunal was justified in relying upon the said order while deciding the revision application of the present petitioner. He has read over the order before this court. In para 5, it has been observed that however, to cut the matter short, the way shown by the learned Addl. Special GP seems to be proper, just and legal in view of the Ceiling Act; it is an admitted fact on record that there is excess land to the tune of 4 acres 6 gunthas in the holding of the surplus holder. Now, the question here to be decided is as to which portion of the survey number should be declared as surplus. In the present case, survey number 344 out of which four acres 6 Gunthas was surplus was said to have been in cultivation of the present opponent No. 5 as a tenant whereas survey No. 125/1 and 235 which were also declared as surplus are said to have been sold by registered sale deed to the present applicant. The above stated parcel of the land in view of the facts stated hereinabove are said to be encumbrances on the land which in view of sec.20 of the Act could not be declared as surplus. However, said holder has some other land than the lands stated hereinabove, the Mamlatdar was not justified in declaring the disputed land as surplus.

In pursuance to the order passed by the tribunal dated 25.8.1982, the Mamlatdar and ALT has decided to take surplus land of 4 Acres 6 Gunthas from survey No. 344 which has been approved by the deputy collector by order dated 8.6.1987 by confirming the order dated 20th June, 1984 wherein it is declared that out of total 33 acre 11 gunthas, 4 acres and 6 gunthas has been declared surplus and that should have to be taken from survey no. 344. Said order of the Mamlatdar is very clear in respect of the fact finding given by the Mamlatdar in Ceiling Case NO. 5 of 1976. The petitioner has filed revision application no.5 of 1986 which was decided by the tribunal on 6th August, 1986 wherein the order of the deputy collector was set aside and the appeal was remanded to the deputy collector with a direction to allow the heirs of the appellant to be brought on record and to give opportunity of hearing to all and then to decide the matter in accordance with law. In view of such directions of the tribunal by order dated 6th August, 1986, the deputy collector considered the entire matter on merits and by order dated 8th June, 1987, confirmed the Mamlatdar's order dated 28th June, 1984 which order of the deputy collector was challenged in revision application no. 35 of 1987 by the petitioner.

I have perused the entire order passed by the tribunal in revision application no. 123 of 1981 dated 25.8.1982 as well as the order dated 20.9.88 passed by the tribunal in revision application No. 35/87. The tribunal has observed that this case is having a chequered history as described in the judgment of the Deputy Collector in ceiling appeal no. 29 of 1984. The Mamlatdar had in past issued order dated 20.9.1980 declaring that Taimuras Ardeskar held 33 acres 11 gunthas on 24.1.1971 when he died in 1971, an area of 17 acres was treated as orchard and therefore three acres 35 gunthas were taken into account for the purpose and in all, 4 acres and 6 gunthas of land was declared surplus which was ordered to be taken either from s.n.344 or partly from s.n.235 and partly from s.n.125. This type of contingent, conditional or unclear order was not upheld in appeals and subsequently by the tribunal and ultimately it was directed that the surplus land can be taken from the land legally and physically held by the holder Shri Diwecha. In the remand proceedings, the Mamlatdar and ALT found that s.n.344 ad measuring 11 acres 7 gunthas was held by Shri Divecha and therefore he declared that surplus land of 4 acres 6 gunthas should be taken from this s.n.344 from its western side. The order was upheld by the deputy collector in appeal. It should be also noted that in revision application no. 123/81

decided by this tribunal on 25.8.82, a clear direction was given as to the selection of the land of 4 acres and 6 gunthas, which is declared surplus against which no further proceedings were taken before the High Court and that order has become final. In view of such observations, the tribunal was of the view that there is no substance in the revision application and the tribunal therefore dismissed the same while upholding the orders passed by the lower authorities.

Considering the tribunal's order under challenge, according to my opinion, the order impugned herein is well reasoned order which has been passed by the tribunal with due application of mind and the same is based on cogent reasons which does not require any interference of this court in exercise of the powers under Article 226/227 of the Constitution of India.

Having perused the entire order passed by the tribunal, as per my view, the order passed by the tribunal is well reasoned order. There is no error which is apparent on the face of the record. Learned advocate for the petitioner has also not been able to point out any infirmity in the order impugned herein. Therefore, according to my opinion, the tribunal has not committed any error in passing the said order. Further in view of the decisions reported in 1998 (1) GLR page 17 and 1998 (1) AIR SCW page 1840 as well as the decision reported in 1998(1) GLH 461, this court cannot act as an appellate authority and cannot reappreciate the very same evidence which was once appreciated by the tribunal and the lower authorities.

Therefore, taking into consideration all these aspects of the matter, according to my opinion, the impugned order passed by the tribunal requires no interference at the hands of this court while exercising the powers under Article 227 of the Constitution of India and this petition is required to be dismissed. Same is accordingly dismissed with no order as to costs. Rule is discharged. Ad interim relief, if any, shall stand vacated.

12.9.2000. (H.K. Rathod, J.)

